NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK
AUG - 8 2008
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. CHRISTOPHER MICHAEL ANDERSON, Appellant.	)	2 CA-CR 2007-0301 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20062719

Honorable John F. Kelly, Judge

AFFIRMED

DiCampli, Elsberry & Hunley, LLC
By Anne Elsberry
Tucson
Attorneys for Appellant

V Á S Q U E Z, Judge.

¶1 After a jury trial, appellant Christopher Anderson was convicted of possession of a deadly weapon by a prohibited possessor, a class four felony, and unlawful discharge of a firearm, a class six felony. The trial court imposed concurrent, substantially mitigated

prison terms, the longer of which was 2.25 years. Appellate counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967); *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999); and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), stating she has reviewed the record thoroughly and has found no arguable issues to raise on appeal. She asks this court to search the record for fundamental error. Anderson has not filed a supplemental brief. We affirm.

¶2 We view the evidence in the light most favorable to sustaining the verdicts. *State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999). The evidence at trial established that Anderson knowingly had possessed a weapon as a prohibited possessor and that he had discharged that weapon within the city limits. *See* A.R.S. §§ 13-3102(A)(4) and 13-3107.

¶3 Despite counsel's avowal that she could find no arguable issues to raise on appeal, she notes that trial counsel had raised the issue whether Anderson should have been given the *Miranda*[1] warnings as he was transported to the police station by Tucson Police officer Christopher Herrbach, despite officer Brent Selby's having so advised him an hour earlier in the presence of Herrbach. Although it is unclear whether counsel suggests this issue actually presents an arguable issue on appeal, we nonetheless address it and find it does not.

[1]*Miranda v. Arizona*, 384 U.S. 436 (1966).

¶4 On the second day of trial, the court conducted a voluntariness hearing on Anderson's oral motion to suppress statements he had made on the way to the police station, admitting he had previously been convicted of a felony and that he had possessed a weapon earlier that morning. Anderson argued that, because a little more than one hour had passed since he had been read his constitutional rights in accordance with *Miranda*, those statements were involuntary. The trial court denied Anderson's motion, finding as follows:

> I find the time lapse of an hour and seven minutes not to be too great of a time lapse. The most significant factor is that the statement in the car about . . . handling the gun and having the gun and shooting the gun—is the same as the statement made to the prior officer.

¶5 We will not disturb a trial court's ruling on a motion to suppress statements for an abuse of discretion. *State v. Gay*, 214 Ariz. 214, ¶ 30, 150 P.3d 787, 796 (App. 2007). We review only the evidence presented at the voluntariness hearing, which we view in the light most favorable to sustaining the court's ruling. *Id*. Selby testified at trial that after he had read Anderson his *Miranda* rights, in the presence of Herrbach, Anderson had admitted that he had been firing a weapon on the public property where Selby had found him. Therefore, as the court found, Anderson's later admission that he had possessed and shot a weapon only reinforced his earlier one, the voluntariness of which he does not appear to question. We additionally note the record does not suggest the circumstances had changed significantly during the brief, one-hour span between Selby's advising Anderson of his rights and Herrbach's transporting him to the police station. Nor is there evidence that

Anderson was in any way coerced to speak with Herrbach during the ride, requiring that he be given the *Miranda* warning again. *State v. Miller*, 110 Ariz. 597, 598, 522 P.2d 23, 24 (1974) (supreme court has "repeatedly held that once a defendant has been fully and fairly appraised of his [constitutional] rights [in accordance with *Miranda*], there is no requirement that the warnings be repeated each time the questioning is commenced").

¶6 Pursuant to our obligation under *Anders*, we have searched the record for fundamental, reversible error and have found none. Therefore, Anderson's convictions and sentences are affirmed.

_____
GARYE L. VÁSQUEZ, Judge

CONCURRING:

_____
PETER J. ECKERSTROM, Presiding Judge

_____
PHILIP G. ESPINOSA, Judge